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NLRB Proposes Rule Requiring Employee Rights Notice

On December 22, 2010, the National Labor Relations Board proposed regulations that would require private-sector employers to notify employees of their rights under the National Labor Relations Act, including the right to organize and bargain collectively. Under the proposed regulations, employers (including unions) covered by the Act would have to provide notice regardless of whether their employees are represented by a union.

Background

The National Labor Relations Act (NLRA) applies to most private-sector workplaces, but does not cover employers of airline, railroad, and agricultural workers. On December 22, 2010, the National Labor Relations Board (NLRB) [proposed regulations](#) requiring all employers subject to the NLRA to post notices informing employees of their rights under the NLRA, including the right to unionize, bargain collectively, strike and picket.

The Notice

Under the proposed regulations, employers subject to the NLRA generally would be required to post and maintain a notice of employee rights under the NLRA regardless of whether their employees are represented by a union. The proposed regulations establish the size, form and content of the notice, detail posting requirements, and enumerate sanctions available for failure to comply with the new requirement.

Required Size, Form and Content. The proposed regulations set out the text of the employee notice in the Appendix to Subpart A. The proposed 11-by-17inch color poster states that employees have a right to organize, to form, join, and assist a union, to bargain collectively with their employer, to act together to improve wages and working conditions, to strike and picket, and to choose not to do any of these. Along with examples of unlawful employer and union conduct, the notice provides instructions on how to contact the NLRB with questions or complaints.

BUCK COMMENT. *The proposed notice is similar in content and in design to the employee [notice](#) of NLRA rights that the Department of Labor (DOL) requires federal contractors to post. According to an NLRB [fact sheet](#), a contractor would comply with the NLRB's posting requirement by posting the DOL notice, thus eliminating the need for a second posting.*

Notices will be available from NLRB regional offices and downloadable from its website, and employers will have to take reasonable steps to ensure that they are not altered, defaced or covered by other materials.

Posting Requirement. In addition to posting a hard copy where employee notices are customarily posted, the proposed regulations would also require employers that regularly communicate with employees electronically to distribute the notice electronically, such as by e-mail, posting on an intranet or Internet site, or other electronic means. The proposed regulations provide specific wording to be used in the email, web page or link.

As with other federally required workplace postings, the regulations would require posting the notice in the language or languages their employees speak if a significant portion of employees are not proficient in English. The NLRB has indicated that it will provide translations of the notice as needed.

Reporting and Recordkeeping Requirements. As proposed, the regulations contain no recordkeeping or reporting requirements.

Penalties for Noncompliance

Although there is no monetary fine for a failure to post, the proposed sanctions for noncompliance with the new posting requirement include –

- finding the employer's failure or refusal to post the employee rights notice to be an unfair labor practice
- tolling the 6-month statute of limitations for filing other unfair labor practice charges
- considering an employer's *knowing* noncompliance as evidence of unlawful motive in other unfair labor practice cases.

Effective Date

The NLRB has invited public comment on the proposed regulations by February 22, 2011, and is expected to issue final regulations shortly thereafter.

Conclusion

The proposed NLRB posting requirement applies in both unionized and non-unionized workplaces, and covers most private-sector employers as well as labor unions in their capacity as employers. If the proposed regulations become final, the sanctions for non-compliance may be significant. Thus, employers will want to ensure that they are prepared to meet the NLRB's new notice requirements.

Buck's consultants are prepared to assist in your compliance efforts.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.